Supreme Court, U.S.
FILED

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No. _____

In the Supreme Court of the United States

OCTOBER TERM, 1995

Maurice A. Cummings, Corporal,
United States Marine Corps,

Petitioner

v.

The United States of America,

Respondent

Petition For A Writ of Certiorari To The United States Court of Appeals For The Armed Forces

PETITION FOR A WRIT OF CERTIORARI

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36 pp

QUESTION PRESENTED

I

WHETHER PETITIONER WAS ENTRAPPED WHEN GOVERNMENT LAW ENFORCEMENT AGENTS MADE REPEATED SOLICITATIONS TO COMMIT DRUG OFFENSES KNOWING THAT PETITIONER WAS NOT OTHERWISE PREDISPOSED TO COMMIT THE OFFENSES INDEPENDENT OF THE GOVERNMENT ACTIONS.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Maurice Cummings, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Armed Forces be entered in this proceeding.

OPINION BELOW

On September 13, 1994, the Navy Marine Corps Court of Military Review (hereinafter "CMR") affirmed the findings and the sentence in its entirety (Appendix A).

On March 22, 1994 the United States Court of Appeals for the Armed Forces (hereinafter "COMA") denied Corporal Cummings' petition for a grant of review (Appendix B).

JURISDICTION

The decision of COMA, denying Corporal Cummings' petition, was rendered on March 22, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. § 1259(3) (Supp. 1992).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be . . . deprived of life, liberty, or property, without the due process of law . . . .

STATEMENT OF THE CASE

Petitioner was tried by the military judge alone at a general court-martial convened on August 12-13, 1992. The charges and specifications upon which he was arraigned, his pleas, and the court-martial's findings were as follows:

Chg	Art UCMJ[1]	Specs	Summary of offense	Pleas	Findings
I	81	1	Conspiracy to distribute cocaine	NG	G
II	112a	1	Possession with intent to distribute cocaine	Withdrawn	
	112a	2	Wrongful distribution of cocaine of 10/21/91	NG	G
Add.	112a	1	Wrongful distribution of cocaine on 11/1/91	NG	G

The Petitioner was sentenced to a Bad Conduct Discharge, forfeiture of $500.00 pay per month for 12

[1] Article 112a of the Uniform Code of Military Justice (hereinafter "UCMJ") is set forth at 10 U.S.C. § 912a (1982).

months, confinement for 18 months, and reduction to pay grade E-1.

On December 30, 1992, upon review of the record of trial, the military judge set aside the finding of guilty as to Charge I and the specification thereunder and reassessed the sentence by reducing the period of confinement to 12 months while leaving the other punishments unaffected.

The convening authority approved the sentence as reassessed on July 9, 1993. The Navy Marine Corps Court of Military review approved the findings and sentence. (Appendix A).

The government introduced evidence through the testimony of Lance Corporal Adam L. Smith that he had solicited the Petitioner through his part-time employment as a taxi driver in Jacksonville, North Carolina, to sell him crack cocaine and to assist him in purchasing crack cocaine. (R. 16-51). Smith testified that he had been recruited by the Naval

Investigative Service (hereinafter "NIS") to work as an undercover informant (R. 17) and had engaged Corporal Cummings' service as a taxi driver on October 11, 1991, at which time he asked Corporal Cummings if he could provide him with drugs. (R. 19). Smith called the Petitioner at work and at home in an attempt to purchase drugs from him. On October 16, 1991, Smith attempted to purchase drugs from the Petitioner and arranged to meet him at a specified location but the Petitioner never showed up. Smith testified that on October 21, 1991, the Petitioner had sold him one rock of crack cocaine for $45.00 at MCAS, New River, North Carolina. (R. 24, 25).

Smith testified further that the Petitioner had driven him and Special Agent Rhodes of NIS to Wadela Street where he had purchased three rocks of crack cocaine from a black male after the Petitioner had talked to the black male outside Smith's presence. (R. 28,29). Smith testified that he

had contacted the Petitioner between ten and twenty times in order to accomplish the sale of drugs. (R. 30).

On cross-examination Smith testified he could not recall how many times he had called the Petitioner prior to October 21, 1991 (R. 35) nor could he recall how many times he had called him between October 21 and November 1.

Smith testified that he had given the Petitioner $40.00 for the rock on October 21, and $5.00 for gas at the Petitioner's request. (R. 36).

Smith testified further on examination by the court that he had purchased $130.00 of cocaine from an unidentified individual and had paid the Petitioner $20.00 for the taxi ride.

Special Agent Michael A. Rhodes, U.S. Marine Corps, testified that he had set up a surveillance of the controlled buy arranged by Smith with the Petitioner on October 16, 1991, but that the accused never made contact with Smith.

(R. 60). Rhodes testified further that prior to October 21, 1991, NIS had no information that the Petitioner had ever dealt drugs. (R. 120).

Dawn W. Cummings was called as a witness by the defense and testified that she was the Petitioner's wife and further testified that Smith had called the Petitioner's residence as many as five or six times in one day. She related that her husband had not accepted the calls and told her to tell him (Smith) that he was not home. (R. 94, 95).

Ieesha Bradford was called as a witness by the defense and testified that during October, 1991, while she was working for the same taxi company as the Petitioner, that a certain customer frequently called the taxi business asking for the Petitioner. She testified further that on learning who was calling, the Petitioner had told the taxi dispatcher to send another cab and when the Petitioner was informed that the customer was going to wait for him (the Petitioner), the

Petitioner directed the dispatcher to send another cab. (R. 98, 99).

The Petitioner was called as a witness on his own behalf. (R. 104). He testified that Special Agent Rhodes had not included statements he had made to him (Rhodes) concerning Smith harassing him on and off the job, repeatedly asking for him to get drugs for him. (R. 106). He testified further that Smith had portrayed himself as a victim of an assault by some black men and that he (the Petitioner) had felt sorry for Smith and had driven Smith places in his cab without charging him. (R. 107). He had told Smith he didn't want to get involved with drugs, (R. 107) and denied that he offered to "hook" Smith up at their first meeting (R. 110). When Smith kept calling him at his work and at his unit he felt he was being suspected, he told Smith he would get his stuff but stop calling him. Although he got Smith the drugs, Smith kept calling. (R. 108). The Petitioner testified

he gave his business card to all his customers (R. 113, R. 137). The Petitioner denied being involved in the sale of drugs prior to October 21, 1991. (R. 130).

On redirect examination the Petitioner testified that on the 21st of October he had gone to the fitness center where Smith worked and told Smith that he would try to get drugs for him if he (Smith) would stop calling. (R. 134).

Mr. Tommy Baggett was called by the defense and testified that he owned the taxi company which employed the Petitioner on a part time basis and that he remembered the Petitioner being repeatedly called by someone named Adam. After Adam had called several times, Baggett told him not to call him anymore unless he wanted a cab. (R. 142). Baggett testified further that the Petitioner had told him not to put the guy's call through to him even when he was working. (R. 143).

Staff Sergeant Zachary R. Fowler, USMC, testified

that as the Petitioner's staff noncommissioned officer in charge, he became aware of calls the Petitioner had received at his work section and that the Petitioner had complained to him about begin harassed by a particular caller. (R. 142).

The stipulated testimony of John Allan was introduced by the defense with the express agreement of the government. (Defense Exhibit C). It related that while he was assigned to the Petitioner's work section during October, 1991, he had answered as many as fifteen to twenty calls from Adam asking for the Petitioner, once as many as five calls in one day. Sometimes the Petitioner was present and told him (Allan) to tell Adam he was not in, other times he (the Petitioner) spoke with Adam. Adam had made numerous calls and members of the unit became suspicious as to why he kept calling.

When Lance Corporal Smith was recalled by the court he testified that he had called the Petitioner six or seven

times between the 11th of October and the 16th of October and had talked to the Petitioner twice but never discussed why the Petitioner had not shown up on the 16th.

REASON FOR GRANTING THE WRIT

In affirming Petitioner's conviction, the CMR disregarded this Court's precedent in the law of entrapment and the long-standing principle that the Government is responsible for the knowledge and activities of its own agents.

The law enforcement conduct in this case was outrageous. The informant repeatedly solicited Petitioner, a law-abiding Marine, to purchase drugs. Petitioner ultimately relented, and a man with no predisposition to traffic in narcotics was convicted. Petitioner submits that in light of the CMR's refusal to prevent such a flagrant abuse of police power, it is incumbent upon this Court to deter what will

likely be similar abuses in the future.

I. THE COURT OF REVIEW DISREGARDED THIS COURT'S PRECEDENT ESTABISHED IN JACOBSON v. UNITED STATES, 503 U.S. (1992), AND SHERMAN v. UNITED STATES, 356 U.S. 369 (1958), CONCERNING PREDISPOSITION.

"The function of law enforcement is the prevention of crime and the apprehension of criminals. Manifestly, that function does not include the manufacturing of crime." Sherman, 356 U.S. at 372. Petitioner's case is a stark example of a law enforcement agency manufacturing a crime by inducing a Marine with no criminal record to distribute drugs.

In Sherman, this Court held the Government liable for the knowledge of the informant, 356 U.S. at 375; Petitioner asks that this Court do the same in his case. Even if the Government did not need reasonable suspicion to investigate Petitioner, see e.g., United States v. Luttrell, 923 F.3d 764

(9th Cir. 1991) (en banc), cert. denied, 112 S.Ct. 1558 (1992) and cases cited therein, at trial the Government failed to demonstrate that Petitioner was predisposed to distribute cocaine prior to its investigation. Jacobson, 112 S.Ct. 1540. Thus, the prosecution must fail.

As a matter of law, the Government failed to meet its burden of proving beyond a reasonable doubt that Petitioner was predisposed to distribute drugs prior to the government's overtures. This failure was fatal to its case, see Jacobson, at 1540 n.2, and the lower court's decision should not salvage it.

It is a defense that the criminal design or suggestion to commit the offense originated in the government and the Petitioner had no predisposition to commit the offense. RCM 916 (G).

There are two elements to this defense, the inducement element, and the predisposition element.

In the instant case it is undisputed that the government agent (Smith) originated the inducement to distribute drugs, so the only issue before this court is whether the government proved beyond a reasonable doubt that the Petitioner was predisposed to commit the offenses.

In its decision the Court of Military Review totally ignores all the evidence, both direct and circumstantial, that proves that the Petitioner was not predisposed to commit the offenses.

The evidence is undisputed that when the government first attempted to purchase drugs from the Petitioner, the Petitioner did not appear at the proposed location where the transfer was to take place and the government agent had to call the Petitioner repeatedly to accomplish the distribution.

While it is not clear from the record how many times the government agent had to contact the Petitioner in order to accomplish the sales, it is clear that Smith contacted the

Petitioner repeatedly at his home, his military work section, and at his part time job at the taxi cab company.

It is noted that the government agent (whose testimony was prompted by refreshing his recollection at least 15 times during his testimony) gave varying accounts of the number of times he was required to contact the Petitioner to effect the distribution of drugs; "ten to twenty times" (R. 30), he could "not recall how many times" (R. 35), six or seven times (R. 168). Smith's testimony as to the number of calls he made to the Petitioner is contradicted by independent defense witnesses.

Furthermore the unrebutted testimony of Dawn Cummings (R. 94-95), Ieesha Bradford, (R. 98-99), Tommy Baggett (R. 142-143), Staff Sergeant Fowler (R. 142) and the stipulated testimony of John Allan (Defense Exhibit C) all indicate that the Petitioner tried on many occasions to avoid contact with the government agent.

The evidence is not in dispute that only after repeated phone calls, which the Petitioner tried to avoid, did the Petitioner participate in selling drugs to the government agent. Moreover, when he finally capitulated to the harassment and agreed to sell the drugs, he did so only in order to get Smith off of his back.

COMA defined the entrapment defense in United States v. Bell, 38 M.J. 358 (C.M.A. 1993), as follows: "When the issue of entrapment is raised by the evidence the prosecution must prove beyond a reasonable doubt that the defendant was predisposed to commit the criminal acts prior to the first being approached by government agents." Bell cited this court's decision in Jacobson v. United States, 503 U.S. 540 (1992).

In its decision the CMR abandoned the standard set forth in Bell and Jacobson in favor of a higher standard, citing United States v. Evans, 924 F.2d 714 (7th Cir. 1991).

That court states "When a person accepts a criminal offer without being offered extraordinary inducements, he demonstrates his predisposition to commit the type of crime involved." In effect the CMR states that unless there was an "extraordinary inducement" a defendant shows that he is predisposed to commit the offense when he commits it. This is a new constitutionally infirm standard above that required by RCM 916(g), Bell, and Jacobson. In United States v. Groll, 992 F.2d 755 (7th Cir. 1993), the Seventh Circuit held that undisputed evidence of refusal by the defendant to sell drugs to the government agent followed by persistent phone calls raised the entrapment defense. Under these circumstances it is difficult to comprehend how CMR devined that the Seventh Circuit had adopted a different standard.

Other United States Courts of Appeal have defined the entrapment defense in more precise terms, specifically as related to the instant case. In United States v. McLernon,

746 F.2d 1098, 1112 (6th Cir. 1984), a case which was decided on the issue of whether there was entrapment as a matter of law, the Sixth Circuit defined the factors showing predisposition as follows: the character or the reputation of the defendant including a prior criminal record, whether the suggestion of the criminal activity was initially made by the government, whether the defendant was engaged in the criminal activity for profit, whether the defendant evidenced reluctance to commit the offense overcome only by repeated government inducement or persuasion, and the nature of the inducement or persuasion supplied by the government. The court stated that the most important factor in determining the lack of predisposition is "whether the defendant evidenced reluctance to engage in criminal activity which was overcome by repeated government inducements." Id. at 1113.

The United States Court of Appeals for the Ninth Circuit has adopted an identical standard with respect to

proving predisposition where the defendant has asserted an entrapment defense. "Five factors are relevant in determining predisposition: (1) the character of the defendant, (2) who first suggested the criminal activity, (3) whether the defendant engaged in the activity for profit, (4) whether the defendant demonstrated reluctance, and (5) the nature of the government inducement. See United States v. Skarie, 971 F.2d 317 (9th Cir. 1992). Like the Sixth Circuit the Ninth Circuit considers the most important factor to be whether the defendant demonstrated reluctance which was overcome by the government's inducement. Id. at 320.

In its opinion CMR states "However, it is clear that the Petitioner responded positively to the inducement to "hook (Smith) up" on the very first try, even providing Smith with his business card and inviting him to call." The Court totally ignores the Petitioner's testimony that he gave all his taxi customers his card with his phone number (R. 113).

The CMR also disregards Petitioner's testimony denying that he agreed to "hook up" the government informant on his first meeting (R. 110). While the Court of Military Review may view the evidence in the light most favorable to the government, in the instant case their reliance is on the testimony of a government informant whose memory of the events was so impaired that his recollection had to be refreshed at least fifteen times while he testified. The court totally ignored all the other unrebutted evidence indicating that the Petitioner attempted to distance himself from the government agent even to the extent of abandoning the opportunity to earn money from the government agent legitimately by transporting him in his taxi. Such evidence of reluctance to commit the offense is emphasized by the United States Courts of Appeals in McLearnon and Skarie as being most determinative factor on the issue of predisposition.

Unless this court follows the "extraordinary inducement" standard adopted by CMR in the instant case, which presumes predisposition in the absence of extraordinary inducement, the evidence in the instant case cannot support a finding that the government proved beyond a reasonable doubt that the Petitioner was predisposed to commit the offense even when viewed in the light most favorable to the government. Unrebutted evidence that the Petitioner exhibited extreme reluctance to commit the offenses is totally inconsistent with a finding that the Petitioner was predisposed to commit the offenses.

Petitioner's defense of entrapment applies to all of the offenses of which he was convicted. In a similar factual situation undisputed evidence that the second drug transaction was temporally in the same ball park as the first transaction in which the jury acquitted defendant was held to support a finding that the defendant was entrapped into participating in

both transactions. See United States v. Beal, 961 F.2d 1512 (10th Cir. 1992).

The unrebutted evidence in this case shows that the Petitioner did not appear at the first attempted purchase by the government informant; he avoided the government informant's phone calls by telling the individuals answering the phone to tell the government agent that he was not there; he refused to go pick up the government agent in his cab and thus declined the opportunity to profit from a legitimate enterprise; and in the end, only after repeated calls by the government agent at his home, his duty section, and his taxi business did he finally sell drugs to the government informant and assist him in purchasing drugs. Clearly, the unrebutted evidence shows as a matter of law that the Petitioner was not predisposed to commit the offenses. It certainly is insufficient to show beyond a reasonable doubt that the Petitioner was "predisposed to commit the offense," the

standard for an entrapment defense prior to this case.

CONCLUSION

In finding no entrapment, the CMR opinion disregarded this Court's precedent in Sherman and Jacobson. The court's refusal to invoke a judicial remedy has left Petitioner and other members of the armed forces without any meaningful remedy for such behavior by law enforcement agents. Dismissal of the charges is warranted on due process grounds as articulated in the Fifth Amendment because Petitioner was not predisposed to commit any offenses.

Respectfully submitted,

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APPENDIX

United States Court of Appeals
for the Armed Forces

UNITED STATES,	)	USCA Dkt.No. 95-0169/MC
	)	CMR Dkt. No. 93-1913
Appellee	)	
	)	ORDER DENYING PETITION
v.	)	
	)	
Maurice A. Cummins	)	
(121-68-1505),	)	
Appellant		

On consideration of the petition for grant of review of the decision of the United States Navy-Marine Corps Court of Military Review, it is by the Court this 22nd day,of March, 1995,

ORDERED:

That said petition be, and the same is hereby denied.

For the Court,

/s/ John A. Cutts, III

Deputy Clerk of the Court

cc: The Judge Advocate General of the Navy Appellate De fense Counsel (BAKER, Esq.) Appellate Government Counsel (SCUDDER)

IN THE U.S. NAVY-MARINE CORPS COURT OF MILITARY REVIEW
WASHINGTON NAVY YARD
WASHINGTON D,C.

BEFORE

DAVID C. LARSON EDWIN W. WELCH

P.J. McLAUGHLIN

UNITED STATES

V.

Maurice A. CUMMINGS, 121 68 1505
Corporal (E4), U.S. Marine Corps

NMCM 93 01913 Decided 13 September 1994

Sentence adjudged 13 August 1992, Military Judge: D.A. Anderson. Review pursuant to Article 66(c), UCMJ, of General Court-Martial convened by Commanding General, 2d Marine Division, Fleet Marine Force, Camp Lejeune, NC.

WILLIAM J. BAKER, Esquire, Civilian Defense Counsel
LT J.A. D0UGLAS, JAGC, USNR, Appellate Defense Counsel Maj LAURA L. SCUDDER, USMC, Appellate Government Counsel

AS AN UNPUBLISHED DECISION THIS OPINION DOES NOT SERVE AS PRECEDENT.

LARSON, Chief Judge:

Contrary to his pleas, the appellant was convicted by general court-martial military judge sitting alone, of two specifications of wrongful distribution of crack cocaine, in

violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a. Although originally convicted of conspiracy to distribute Cocaine as well, the military judge reconsidered that finding and, in a post-trial session, found the appellant not guilty of that offense. He then sentenced the appellant to confinement for 16, months, forfeiture of $500 pay per month for 12 months, reduction to pay grade E-1, and a bad conduct discharge. The convening authority approved the sentence and forwarded the record for review by this Court under Article 66, UCMJ, 10 U.S.C. § 866.

On appeal, the appellant reasserts the defense he presented at trial, i.e., that he was entrapped by the Government agents into distributing illegal drugs.[1] After a thorough review of the evidence of record, we find it legally and factually sufficient to establish the appellant's guilt of the offenses of which he stands convicted. *United States v. Turner,* 25 M.J. 324 (C.M.A. 1987).

I.

During his off-duty hours, the appellant drove a taxi cab in Jacksonville, North Carolina near Camp Lejeune. On 11 October 1991, Lance Corporal, Smith, who was working as an undercover informant for the Naval Investigative Service (NIS) while awaiting medical discharge from, the Marine Corps, hailed his cab at a shopping mall for a ride to Camp Lejeune.

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[1] In his accord assignment of error, the appellant claims that he has been denied appellate review by an impartial court because the fitness reports for this Court's judges are prepared by the Judge Advocate General of the Navy. This systemic attack has been answered by the U. S. Court ot Military Appeals in *United states v. Mitchell,* 39 MJ. 131 (C.M.A, 1994), *petition for cert.* filed, 63 U.S. L.W. 3093 (U.S. Aug 9, 1994) (No. 94-174), adversely to the appellant's position and is therefore devoid of merit.

Smith had been directed by the NIS to target cab drivers as suspected local sources of drugs, However, the appellant had not been previously suspected of drug dealing and was not a specific target of the operation. After identifying himself as a Marine, Smith asked the appellant if he could "hook him up." The appellant identified some women they passed during the ride as probable drug sellers but Smith was under orders not to consummate a drug purchase at that time and declined. The appellant gave Smith his business card with his work and home phone numbers thereon, and told Smith to call him. Smith did so on several occasions over the next several days at home and work. Record at 19-20.

On 16 October, the appellant picked up Smith and took him to an establishment in town, ostensibly to purchase narcotics. A friend of the appellant's, "Donnie," rode in the cab with Smith. According to Smith, the appellant left him downtown, promising to return with some marijuana, but he did not return that evening. Their next meeting was on 21 October when the appellant came by Smith's place of duty and told him he would pick up Smith at the post exchange that evening for the purpose of "hooking him up," Record at 24. The appellant did pick him up at the exchange and passed Smith a "rock" of crack cocaine in the parking lot. Record at 25.

Between 21 October and 1 November, according to Smith, he called the appellant three or four times in an attempt to arrange another sale. On 1 November, the appellant agreed to supply Smith with drugs again, Record at 27. The appellant picked up Smith and an NIS agent (posing as Smith's cousin) and took them to a part of town where they met Donnie. After the appellant talked to Donnie out of the presence of Smith and his "cousin", Donnie sold the two of them three rocks of crack cocaine, Record at 29. The appellant then Smith testified that the total number of times he contacted the dropped off Smith and the agent in another part of town.

appellant was between 10 and 20. Record at 32. He admitted that he might have told the appellant that he was afraid to go down a certain street (presumably where drugs were sold) because he was a "small white person." Record at 34. The NIS agent involved in the foregoing verified Smith's version of the events to the extent that he was present to observe them. He also testified that the appellant was not a specific target of the investigation. Record at 60-64, 68.

Following his apprehension for the sale of narcotics, the appellant signed a typed confession, Prosecution Exhibit 1, in which he admitted giving Smith cocaine on one occasion and driving him and his "cousin" to obtain cocaine from Donnie on another. The appellant testified at trial and admitted again that he had participated in these two transactions. He added that he had done so for basically two reasons: 1) Smith was harassing him by continuously calling him at work and at home to buy drugs, and 2) Smith had said that his medical problems were the result of beatings from black men, and the Appellant--who is black--felt obligated to help and protect Smith to somehow atone for the wrong that had been done to him by members of the appellant's race. Record at 106-10. He said that Smith had called him up to eight times a day and possibly over 100 times during the entire time. Record at 131-32. With regard to the second transaction, the appellant testified that he was merely driving Smith and the agent to a part of town where they could buy drugs but that he had no active role in the purchase. The appellant's wife and, his co-workers testified that someone frequently placed phone calls to the appellant and that the appellant acted as if he did not want to be bothered by that person. Record at 95, 100, 143, 147.

II

The affirmative defense of entrapment arises when the criminal design or suggestion to commit the offense originates with the Government and the accused has no predisposition to commit the offense. Rule for Courts-Martial 916(g). There are two elements to this defense: the inducement element and the predisposition element, *United States v. Whittle*, 34 M.J. 206 (C.MA. 1992). Once the defense is raised by evidence that the inducement to commit the offense came from a Government agent, then the prosecution has the burden to prove beyond a reasonable doubt that the accursed was predisposed to commit the offense before he was approached by the Government agent. *Jacobson v. United States,* 112 S.Ct. 1535 (1992); Whittle, 34 M.J. at 208.
In this case, it is clear that Smith, acting as an agent for the Government, originated the inducement to distribute drugs, record at 195, so the only question is whether the Government carried its burden to prove that the appellant was predisposed to engage in the criminal activity.

The question of predisposition relates to a law-abiding citizen for it is that unwary innocent citizen that the defense of entrapment is designed to protect. *Sherman* v. *United States* U.S. 369, 372 (1958), "A law-abiding person is one who resists the temptations, which abound in our society today, to commit crimes," *United States v. Evans*, 924 F.2d 714, 717 (7th Cir. 1991). "When a person accepts a criminal offer without being offered extraordinary inducements, he demonstrates his predisposition to commit the type of crime involved." Id.at 718. This guidance seems particularly applicable to inducements to distribute unlawful drugs, Readily agreeing to such an inducement naturally implies, on the part of the potential seller, a working knowledge of how and where to obtain the drugs. In this cases the appellant demonstrated his working knowledge of the illegal drug 'business near Camp Lejeune with relative ease. *See e.g., United States v. Lubitz*, 40 *M.J.* 165 (C.M.A. 1994). He indicated that he

knew where to obtain drugs and did so, and then linked these undercover buyers with Donnie, whom by the appellant's own admission, was a regular seller of illegal drugs,

The appellant points to the number of phone calls made by Smith as evidence of the degree of persuasion necessary to convince him to participate. However, it is clear that the appellant responded positively to the inducement to "hook [Smith] up" on the very first try, even providing Smith his business card and inviting him to call. The subsequent phone calls, however many there were, for the purpose of taking advantage of the assistance that the appellant had offered at their first meeting. Furthermore, the fact that the appellant had not been targeted as a suspect before the inducement was made is not persuasive. The entrapment doctrine does not require law enforcement agents to have evidence an accused's criminal activity before approaching him. *United States v. Bell,* 38 M.J. 358, 360 (C.M.A. 1993). Finally, we find that the appellant's testimony that he only sold drugs to get the annoying Smith off his back and because he felt sorry for his previous beating at the hands of blacks is not credible. The first excuse stands in stark contrast to the considerable evidence of predisposition. The second is patently absurd and, in any event, bears little relevance to the defense of entrapment.

In summary, we are convinced beyond a reasonable doubt of the appellant's guilt of the offenses of which he was convicted.

Article 66(c), UCMJ, 10 U.SC § 866(c), Accordingly, the

findings of guilty and the sentence as approved on review below, are affirmed.

DAVID C. LARSON

Senior Judge WELCH and Judge McLaughlin concur.

EDWIN W. WELCH

P.J. McLAUGHLIN